

## **NOS Clearance and Review Policy and Procedures for Interagency Agreements and Memoranda of Agreement or Understanding**

### **PURPOSE**

This document prescribes policies and procedures for the review and clearance of Interagency Agreements, International Agreements and Memoranda of Agreement or Understanding between elements of the National Ocean Service and other organizations outside the Department of Commerce. It also provides sample transmittal memoranda for funded and unfunded agreements, a checklist, definitions and sample formats for such agreements.

### **SCOPE**

The guidance contained herein applies to all NOS organizational units involved in reimbursable work and unfunded relationships with other entities as set forth in the Policy section below. It is meant to supplement the guidance contained in the References and Authorities section. This document does not prescribe procedures for the review and clearance of any contract, grant, or cooperative agreement since those agreements are governed by the Federal Acquisition Regulations (FAR), Federal Grant and Cooperative Agreement Act, Department of Commerce Administrative Order 203-26, and other Department of Commerce policy guidance. Nor does it apply to the Cooperative Research and Development and Invention Licensing Agreements under the Federal Technology Transfer Act of 1989 which are governed by NOAA Administrative Order 201-103 dated November 13, 1989. It also does not apply to Interagency/Intergovernmental Personnel Agreements which are addressed in Personnel Regulations. (BankCard purchases and mandatory sources of supply such as General Services Administration, Government Printing Office, etc. are covered by the FAR and therefore excluded from this guidance.)

### **REFERENCES AND AUTHORITIES**

Department of Commerce Accounting Principles and Standards Handbook, Chapters 17 and 18.

Department Administrative Order 203-26, Department of Commerce Grants Administration, dated May 15, 1985.

Department Administrative Order 218-4, Treaties and Other International Agreements, dated January 14, 1992.

Department Organization Order 10-5, Chief Financial Officer and Assistant Secretary for Administration, dated January 22, 1996.

NOAA Administrative Order 201-105, Memoranda of Agreement or Understanding, dated October 22, 1992.

NOAA Budget Handbook, Chapter 2, Section 03, Reimbursable Task Planning (RTP), dated June 30, 1994.

NOAA Finance Handbook, Chapter 9, Fees for Special Products and Services, dated April 23, 1990.

OMB Circular No. A-25, SUBJECT: User Charges, dated July 8, 1993.

## **POLICY**

In furthering its programs, NOS becomes involved on a continuing basis with a large number of international, Federal, state and local agencies, universities, tribal organizations, and other public and private institutions. Relationships may or may not be financial transactions. These relationships are encouraged but require proper documentation and review by NOS Headquarters and the Office of General Counsel (OGC), Department of Commerce. Such reviews ensure that agreements are in the proper format, reflect the appropriate authority for entering into the specific relationship and do not violate any of the laws governing NOS obligations of its appropriated funds. Exceptions to the review requirement are Economy Act inter and intra-agency agreements of \$100,000 or less, Joint Project Agreements with Federal agencies of \$100,000 or less and unfunded Memoranda of Agreement or Understanding (MOA/U) with Federal agencies or state agencies. However, if the unfunded MOA/U involves the transfer or loan of personal property to another Federal or state entity, the OGC review is required. All other such agreements are subject to the review requirements.

In many cases, contracts, grants or cooperative agreements would not be the appropriate instrument to reflect the relationship between the parties. (This is particularly true when the parties are Federal entities.) Accordingly, an Interagency Agreement or an MOA/U is the proper vehicle for documenting the arrangement with the outside organization(s).

An Interagency Agreement would be the appropriate instrument when funding is accepted by NOS for work to be conducted by NOS employees, contractors or grantees. Also, NOS transfers funds to other agencies when authority exists to do so and the other agency is uniquely qualified to conduct the work for NOS. In these cases as well, an Interagency Agreement must be executed to support the transfer of funding.

The authorizing statute for some Government programs requires agencies to obtain advance funding for projects. If not required by statute, funding from Federal entities may be provided in advance of the work to be conducted or reimbursed as work is completed; however, advances are considered the preferred method of payment. Agreements for NOS to conduct work for non-Federal organizations must contain advance payment provisions, unless a waiver has been obtained. However, if the total estimated cost will exceed \$50,000 or the length of time to complete the work will exceed 6 months, an advance payment schedule may be established within the agreement. (See Chapter 2, Section 03, NOAA Budget Handbook, for details on advance payments, including exceptions to the requirement. Also, see **DEFINITIONS**, Attachment 1, for discussion of **Waivers**.)

A Model Interagency Agreement containing both mandatory and optional provisions is included in Chapter 2 of the NOAA Budget Handbook. This format may be used for agreements with Federal agencies for Economy Act transactions, incoming and outgoing funds, and International Agreements. Attachment 2 is a copy of the sample format. A sample format to be used for Joint Project Agreements between NOS and Federal and non-Federal organizations is Attachment 3.

Agreements between NOS and other organizations that **do not** involve funding are documented in MOA/U. The terms MOA and MOU are interchangeable. The acronym MOA/U shall be used throughout this document for consistency. NAO 201-105 provides guidance on drafting MOA/Us and the attachment to that Order may be used as a guide for drafting an MOA/U. A copy of the MOA/U format is provided as Attachment 4.

## **RESPONSIBILITIES**

To ensure sound management in the administration of Interagency Agreements, International Agreements and MOA/Us, NOS managers are expected to have an understanding of the requirements for each authorizing statute they select to justify entering into an Interagency, International Agreement or an MOA/U. The specific responsibilities of NOS personnel involved in the process should be clearly defined in job descriptions and performance plans.

The following prescribes the minimum responsibilities assigned to such officials.

### **a. NOS field and Headquarters managers are responsible for:**

- (1) maintaining internal management control procedures that comply with policies set forth in this policy document and the References cited above;

(2) ensuring that appropriate staff understand the documentation and review requirements for the agreements discussed in this policy memorandum;

(3) ensuring proposed agreements are forwarded by the appropriate field or Headquarters Office Director to the NOS Headquarters Correspondence Unit, N/MB5, at least two months prior to the effective date or start date of work;

(4) providing complete explanation as to why agreements are not submitted for review and clearance at least two months prior to the effective date or start date of work;

(5) ensuring that all Interagency Agreements and International Agreements, both funds coming into NOS and funds going out to other organizations, and unfunded MOA/Us are justified as appropriate undertakings and cite the applicable legal authority(ies) for entering into the agreement;

(6) ensuring a provision requiring advance funding is in Interagency and International Agreements, if required by the applicable legal authority(ies) or NOAA Budget policy;

(7) ensuring full cost recovery is achieved on reimbursable projects in compliance with the NOAA-wide Standardized Labor Distribution Worksheet Procedures issued June 26, 1996 by the Office of Finance and Administration. (See **DEFINITIONS**, Attachment 1, for discussion of **Waivers**);

(8) ensuring that reimbursable agreements include budget breakouts of estimated total project costs including direct labor and the appropriate overhead rate as determined by the NOAA Office of Finance and Administration;

(9) ensuring that Joint Project Agreements include appropriate documentation and separate budget breakouts of costs contributed by NOS and the partner organization(s) to demonstrate equitability (See documentation requirements Paragraph d. "PROCEDURES FOR REVIEW AND CLEARANCE OF INTERAGENCY, INTERNATIONAL AGREEMENTS AND MOA/Us");

(10) ensuring that reimbursable agreements for more than one year include estimated funding for each of the subsequent years;

(11) ensuring that user charges are imposed on recipients when special benefits have been conveyed beyond those occurring to the general public;

(12) ensuring Economy Act agreements (outgoing funds) are supported by file documentation (See **DEFINITIONS**, Attachment 1, Page 1, for the four necessary conditions that must be met and documented in the file) prior to executing each transaction; and

(13) providing the N/MB5 the original of all signed funded Interagency, International Agreements and unfunded MOA/Us, including amendments (changes) and notices of termination.

**b. The Director, N/MB, is responsible for:**

- (1) providing assistance to NOS managers in developing the agreements cited herein;
- (2) reviewing agreements and related documents to ensure compliance with policies and procedures related to such agreements;
- (3) obtaining GCOS and DOC OGC clearance and preparing all related approval documents and distributing appropriate copies to interested parties, e.g., the agreement originating office, and the partner organization;
- (4) assigning reimbursable task numbers for reimbursable agreements, if they do not already exist, after they have been cleared by the OGC;
- (5) conducting followup with the OGC and providing status information to NOS offices;
- (6) issuing policy guidance as necessary and serving as the principal policy contact on all matters related to Interagency Agreements, International Agreements and MOA/Us;
- (7) maintaining Interagency and International Agreements and MOA/U files; and
- (8) providing the Administrative Services Division, OFA53, a copy of all signed unfunded MOA/Us, including amendments (changes) and notices of termination.

**PROCEDURES FOR REVIEW AND CLEARANCE OF INTERAGENCY, INTERNATIONAL AGREEMENTS AND MOA/Us**

**a.** All new Interagency, International Agreements and MOA/Us subject to the review requirements, as well as amendments/modifications to existing agreements, must be submitted to the Director, N/MB, at least two months before the start date. This will allow time for review by NOS Headquarters and clearance by the OGC before the agreement is effective. Any agreement not submitted two months before the start date must be accompanied by a complete explanation, signed by the field or Headquarters Office Director, as to why submission two months in advance was not possible.

Exceptions to the review and clearance process are:

- (1) time extensions with no change to the scope of work;

- (2) Economy Act agreements of \$100,000 or less;
  - (3) annual work and funding plans for subsequent years of work described in the original agreement cleared by the OGC, if there is no significant change to the scope of work;
  - (4) unfunded MOA/Us with Federal or state entities; (However, if unfunded MOA/U involves the transfer or loan of personal property, OGC review is required.)
  - (5) Joint Project Agreements between Federal agencies of \$100,000 or less.
- b.** Any agreement that has already been initiated must be accompanied by a full explanation signed by the Office Director as to why it was not submitted to NOS Headquarters prior to the start date and what harm would occur to the Government if the project were suspended pending OGC clearance. The explanation must also state what action has been taken to ensure that everyone involved understands the process to preclude similar action in the future. The Assistant Administrator for the National Ocean Service expects such actions to be rare occurrences.
- c.** The transmittal memorandum or supporting documentation for reimbursable agreements must demonstrate that:
- (1) the task cannot be performed economically by the requesting agency with its own facilities or by government-wide service agencies;
  - (2) the services would not be considered to be in competition with private enterprise because of NOS's unique expertise and activities;
  - (3) the end results will serve the public interest and are consistent with NOS programs;
  - (4) undertaking the projects would not result in the diversion of resources to the detriment of NOS basic programs;
  - (5) the results of the service will not result in controversy that will have an adverse effect on the Department's reputation for impartiality and objectivity; and
  - (6) no exclusive proprietary interest would accrue to the other party.

These same rules apply when NOS transfers funds to another organization for services or projects.

**d.** A Joint Project Agreement (JPA) must include documentation explaining that:

(1) the project is essential to the furtherance of NOS's programs;

(2) the project cannot be done as effectively without the participation of the partner organization and NOS and is of mutual interest to both parties; and

(3) the cost for the project is apportioned equitably, unless a waiver of any portion of the costs has been approved. (See **DEFINITIONS**, Attachment 1, for discussion of **Waivers**).

Since costs charged to a reimbursable task must not include charges for resources not actually used to accomplish a project, funds transferred in from other Federal agencies **solely** to support a contract, cooperative agreement, or grant are not joint project agreements.

A JPA requires both the NOS and the partner organization to contribute resources on an equitable basis when they engage in projects or perform services on matters of mutual interest. The budget for the project or the service must include separate breakouts of costs contributed by NOS and the partner organization to demonstrate equitability in the conduct of the joint project, and the agreement itself must explain that the cost for the project is apportioned equitably. A sample format for a JPA is Attachment 3 to this guidance.

**e.** Conveyance of special benefits to recipients, beyond those occurring to the general public, require the collection of user fees. User fees are to be collected in advance of, or simultaneously with the rendering of services, unless appropriations and authority are provided in advance to allow reimbursable services. Absent statutory authority to the contrary, user fees collected by NOS must be deposited into the Treasury.

**f.** Each agreement, subject to the review requirements must be forwarded by a transmittal memorandum addressed to the Director, N/MB, signed by the responsible Line Office Director. The memorandum should contain the appropriate information cited above as applicable to that particular agreement. Sample transmittal memoranda for an Interagency Agreement (Reimbursable), a Joint Project Agreement and an MOA/U are attached to this document as Attachment 5. The Interagency Agreement sample may be used for funds transferring out of NOS as well. Also included is a Checklist, Attachment 6, to aid in preparing Interagency Agreements and MOA/Us.

**g.** Upon receipt of the cleared agreement from OGC, the Director, N/MB, will send the clearance to the initiating office via memorandum. If signature authority is at the Assistant Administrator(AA) level, the AA will sign the agreement and the Director, N/MB, will transmit to the initiating office and to the other party(ies).

Guidance on approval and signature authority is as follows:

(1) Delegations and approvals for reimbursable agreements are set forth in Chapter 2, NOAA Budget Handbook as revised by the Acting Deputy Under Secretary for Oceans and Atmosphere memorandum dated April 16, 1998 . For interagency reimbursable agreements (incoming funds), Office Directors may approve and sign agreements \$250,000 and under. The Assistant Administrator for NOS approves and signs over \$250,000 to under \$1,000,000. Interagency reimbursable agreements \$1,000,000 or more or that require 10 FTEs must be routed to the NOAA Chief Financial Officer/Chief Administrative Officer for approval by the Deputy Under Secretary. (See Appendix N, NOAA Budget Handbook, for abstract format to be followed for this approval request.)

(2) Delegations and approvals for interagency transfer of funds to other agencies are set forth in the NOS Delegations of Authority. NOS managers have the same approval authority for interagency transfer of funds (outgoing) as they do for procurement transactions; however, all such transfers must be supported by an agreement that has been reviewed and cleared, as set forth in this guidance, prior to forwarding to the servicing procurement office for processing.

(3 ) Unfunded MOA/Us should be signed at the lowest level to which the significant responsibilities have been delegated. The Assistant Administrator and Office Directors shall sign all MOA/Us for which they have been delegated programmatic authority, except any proposed MOA/U which involves a major policy decision or has a potentially controversial or public interest implication. In such cases, the Under Secretary and Administrator of NOAA shall approve or sign.

N/MB will establish a reimbursable task number for all cleared agreements. If the agreement is a reimbursable over \$250,000, the Director, N/MB, will obtain the signature of the AA or designee for the acceptance document and transmittal letter to the sponsor. If the agreement is \$250,000 or less, the clearance documents will be forwarded to the appropriate official for signature and transmittal to the sponsor.

#### Attachments

1. Definitions
2. Sample Interagency Agreement
3. Sample Joint Project Agreement
4. Sample MOA/U (unfunded)
5. Sample Transmittal Memoranda
6. Interagency Agreement and MOA/U Checklist